



HAMPDEN TOWN COUNCIL  
HAMPDEN MUNICIPAL BUILDING  
AGENDA

MONDAY

JUNE 21, 2021

6:00 P.M.

- A. PLEDGE OF ALLEGIANCE
- B. APPROVAL OF THE AGENDA
- C. CONSENT AGENDA
  - 1. SIGNATURES
  - 2. COUNCIL MINUTES
    - a. 6/7/2021 Council Meeting.
  - 3. COMMUNICATIONS
    - a. Renewal Victualer's License – Mac's Convenience Stores LLC
    - b. Hampden's Ridership on BACTS
    - c. Council Letter to Natural Resources Council of Maine
  - 4. COMMITTEE MINUTES
- D. PUBLIC COMMENTS
- E. POLICY AGENDA
  - 1. NEWS, PRESENTATIONS & AWARDS
    - a. Recognition of appreciation and award to Journey Church for their support of the Hybrid Hangout Program, *presented by Shelley Abbot, Recreation Director.*
  - 2. PUBLIC HEARINGS
    - a. Consideration of the FY 2022 Hampden Town Budget including the Sewer Budget and Capital Program.
  - 3. NOMINATIONS – APPOINTMENTS – ELECTIONS
- F. COMMITTEE REPORTS
- G. UNFINISHED BUSINESS
- H. EXECUTIVE SESSION - pursuant to 1 M.R.S.A. section 405(6)(d) to include the Town Manager and Public Safety Director.

Note: Council will take a five-minute recess at 8:00 p.m.

MONDAY

JUNE 21, 2021

6:00 P.M.

AGENDA

I. NEW BUSINESS

- a. Council authorization for the Town Manager to sign the contract between Town of Hampden and the Professional Firefighters of Hampden Local 4903 for the period beginning July 1, 2021 and ending June 30, 2024.
- b. Council authorization for the Town Manager to sign the contract between Town of Hampden and the Hampden Police Department Maine Association of Police Union for the period beginning July 1, 2021 and ending June 30, 2024.
- c. Council Order 2021-02 Order Regarding Trailers at the Transfer Station, *referred from Council Workshop.*
- d. Council action on Broadband Bond Request, *requested by Amy Ryder, Economic Development Director.*
- e. Council award of Hydraulic Mulching Head Bid, *requested by Victor Smith, Public Works Director.*
- f. Request authorization for the expenditure of \$1,238.40 from Environmental Trust Principal for reimbursement of eligible stormwater expenses for FY21– *referral from Environmental Trust Committee.*
- g. Discussion on Brown Tail Moths, *requested by Avery Caldwell.*
- h. Council action on Emergency Moratorium Ordinance for Multi-Family Dwellings in the Rural District, *referred from Council Workshop.*
- i. Discussion on draft subdivision amendment, *requested by Clifton Iler, Town Planner.*

J. MANAGER'S REPORT

K. COUNCILOR'S COMMENTS

L.. ADJOURNMENT

Note: Council will take a five-minute recess at 8:00 p.m.

FOR THOSE THAT WISH TO PARTICIPATE IN THE  
REMOTE HAMPDEN TOWN COUNCIL MEETING  
ON JUNE 21, 2021 AT 6:00 PM YOU MAY  
PHONE IN USING THE FOLLOWING NUMBER  
(FOLLOWED BY THE PIN #)

**1-720-256-2120      PIN 321 242 434#**

OR-

FROM A LAPTOP OR A DESKTOP, YOU MAY GO  
TO THIS URL: [https://meet.google.com/  
yiu-egcs-gwj?hs=122&authuser=0](https://meet.google.com/yiu-egcs-gwj?hs=122&authuser=0) AND JOIN  
US THAT WAY

**INSTRUCTIONS ARE POSTED WITH THE AGENDA  
AND SEPARATELY ON THE TOWN CALENDAR AT  
[WWW.HAMPDENMAINE.GOV](http://WWW.HAMPDENMAINE.GOV)**

## **Using Google Meet to Participate in Hampden Town Council Remote Meetings**

### **How to join:**

1. Town Council members will receive an email or a Google Calendar Invite with a link to join the meeting.
2. People interested in joining will need to go to the link posted on the town events calendar at [www.hampdenmaine.gov](http://www.hampdenmaine.gov).
3. Anyone can also join for audio-only participation by calling the number provided on the town events calendar and then entering the PIN provided followed by the # symbol.

### **Protocols for Remote Meetings:**

1. Log in or call in at least 5 minutes before scheduled start of meeting.
2. For the audio portion, use either your phone or your computer microphone, not both.
3. Mute your phone or computer mic unless speaking. Remember to un-mute if you want to speak. To mute or unmute in Google Meet, click on the little microphone icon at the bottom of the screen; note you may need to move your mouse pointer around the bottom of your screen to get the bottom bar to appear.
4. Speak up if using a computer microphone or if using the speaker function on your telephone.
5. Do not rustle papers in front of your mic unless it's muted. Please minimize background noise.
6. If you're referring to a document, identify it including page or sheet number.
7. If using the video function, have a light source in front of you if possible. Try to avoid backlighting.
8. If you want to look good, have your camera mounted at eye level or above. Look at yourself on screen to check the lighting, camera position, what's in the background, etc. In Google Meet, you can do this "video check" when you open the program before you join the meeting.
9. If you are participating by audio only, identify yourself when speaking.
10. ALL votes will be by roll call.
11. After the meeting is adjourned, click on the red phone icon on the bottom bar to leave the meeting, or (obviously) just hang up the phone if that is how you are participating.

For detailed instructions on using Google Meet, please refer to their website:

[support.google.com/a/users/answer/9282720?hl=en](https://support.google.com/a/users/answer/9282720?hl=en)



HAMPDEN TOWN COUNCIL  
HAMPDEN MUNICIPAL BUILDING  
MINUTES

.....  
MONDAY JUNE 07, 2021 6:00 P.M.  
.....

*In Attendance:*

*Mayor Shelby Wright  
Councilor Eric Jarvi  
Councilor Mark Cormier  
Councilor Ivan McPike  
Councilor Allen Esposito  
Councilor Peter Erickson  
Councilor Christine Cubberley*

*Paula Scott, Town Manager  
Gayle C. Decker, Town Clerk  
Amy Ryder, Economic Development Director  
Darcey Peakall, Pool Director, Remotely  
Christian Bailey, Public Safety Director  
Jason Lundstrom, Deputy Fire Chief*

*Mayor Wright called the meeting to order at 6:00 p.m.*

A. PLEDGE OF ALLEGIANCE

*Mayor Wright led the Pledge of Allegiance.*

B. APPROVAL OF THE AGENDA

**Motion:** *Councilor McPike moved to approve the agenda, seconded by Allen Esposito  
Vote 7-0.*

*Resolution: 2021 – 103*

C. CONSENT AGENDA

**Motion:** *Councilor Cubberley moved to accept the consent agenda, seconded by Councilor Esposito. Vote 7-0*

*Resolution: 2021 – 104*

1. SIGNATURES

2. COUNCIL MINUTES

- a. 05/17/2021 Council Meeting
- b. 05/19/2021 FY22 Budget Work Session
- c. 05/24/2021 Special Town Council Meeting/FY22 Budget Work Session

3. COMMUNICATIONS

- a. Council Letter to Natural Resources Council of Maine
- b. Renewal Victualer's License – Angler's Restaurant

4. COMMITTEE MINUTES

Note: Council will take a five-minute recess at 8:00 p.m.

.....  
MONDAY

JUNE 07, 2021

6:00 P.M.  
.....

MINUTES

D. PUBLIC COMMENTS

E. POLICY AGENDA

1. NEWS, PRESENTATIONS & AWARDS

- a. Recognition of winners of the Hampden RSU 22 Internet Essay Contest, *presented by Amy Ryder, Economic Development Director.*

*Amy Ryder, Economic Development Director recognized the winners of the RSU 22 Internet Essay Contest. Winners of the Contest were Aiden Byrne, Grade 5 at George B. Weatherbee School; Mason Studley, Grade 7 at Reeds Brook Middle School and Marissa Abbott, Grade 10 at Hampden Academy. Each winner received a certificate and \$200.00 gift card.*

- b. Presentation of FY20 Audit by James Wadman, CPA.

*James Wadman, CPA presented the FY20 Audit Report.*

2. PUBLIC HEARINGS

3. NOMINATIONS – APPOINTMENTS – ELECTIONS

- a. Reappointment of Brent Wells for a 3 year term to the Board of Appeals.

**Motion:** *Councilor Jarvi moved to reappoint Brent Wells for a three-year term to the Board of Appeals, seconded by Councilor Esposito. Vote 7-0*

*Resolution: 2021 - 105*

F. COMMITTEE REPORTS

*Deputy Mayor Jarvi reported on the May 19<sup>th</sup> Budget Meeting and May 24<sup>th</sup> Special Town Council Meeting.*

G. UNFINISHED BUSINESS

- H. EXECUTIVE SESSION - pursuant to 1 M.R.S.A. section 405(6)(d) to include the Town Manager, Public Safety Director and Deputy Fire Chief.

**Motion:** *Councilor Jarvi moved pursuant to 1 M.R.S.A. section 405 (6)(d) to go into executive session to include the Town Manager, Public Safety Director and Deputy Fire Chief for discussion of labor contract proposals, seconded by Councilor Cubberley. Vote by roll call 7-0.*

*Resolution: 2021 - 106*

*Executive session entered at 6:38 p.m.*

*Executive session ended at 7:24 p.m. with votes taken under New Business Items e and f.*

Note: Council will take a five-minute recess at 8:00 p.m.

.....  
MONDAY

JUNE 07, 2021

6:00 P.M.  
.....

MINUTES

I. NEW BUSINESS

- a. Council consideration on Pool Budget Revision, *requested by Darcey Peakall, Pool Director.*

*After discussion referred to the Public Hearing on the Proposed 2022 Hampden Town Budget.*

- b. Council consideration and referral to Public Hearing on the Proposed 2022 Hampden Town Budget.

**Motion:** *Councilor Jarvi moved Council conduct a Public Hearing on Monday June 21<sup>st</sup> for consideration of the proposed 2022 Hampden Town Budget, seconded by Councilor Esposito. Vote 7-0*

*Resolution: 2021 - 107*

- c. Request authorization for the expenditure of \$1,575.00 from the Police Cruiser Reserve Account G 3-753-00 to pay Custom Installations for the installation of equipment to the 2020 Ford Interceptor, *requested by Christian Bailey, Public Safety Director.*

*Public Safety Director Christian Bailey addressed Council on his request.*

**Motion:** *Councilor Esposito moved the expenditure in the amount of \$1575.00 from the Police Cruiser Reserve Account G 3-753-00 to pay Custom Installations for the installation of equipment to the 2020 Ford Interceptor as requested by Chief Bailey, seconded by Councilor Jarvi. Vote 7-0*

*Resolution: 2021 - 108*

- d. Request authorization for \$4,103.00 from a drug forfeiture to be receipted into the Police Equipment Reserve Account G 3-750.00 with \$615.45 of the money being forwarded to Penobscot County, *requested by Christian Bailey, Public Safety Director.*

*Public Safety Director Christian Bailey spoke on his request. This is drug forfeiture money that was part of a criminal case.*

**Motion:** *Councilor Esposito moved to the request for authorization for \$4,103.00 from a drug forfeiture to be receipted into the Police Equipment Reserve Account G 3-750.00 with \$615.45 of the money being forwarded to Penobscot County, seconded. Vote 5-2*

*Resolution: 2021 – 109*

Note: Council will take a five-minute recess at 8:00 p.m.

.....  
MONDAY

JUNE 07, 2021

6:00 P.M.  
.....

MINUTES

- e. Council authorization for the Town Manager to sign the contract between Town of Hampden and the Professional Firefighters of Hampden Local 4903 for the period beginning July 1, 2021 and ending June 30, 2024.

**Motion:** *In light of discussions held in Executive Session, Councilor Jarvi moved to table this item, seconded by Councilor McPike. Vote 7-0*

*Resolution: 2021 - 110*

- f. Council authorization for the Town Manager to sign the contract between Town of Hampden and the Hampden Police Department Maine Association of Police Union for the period beginning July 1, 2021 and ending June 30, 2024.

**Motion:** Councilor Esposito made a motion for discussion, seconded by Councilor McPike.

**Motion:** Councilor Jarvi moved to table discussion, seconded by Councilor McPike.  
Vote 7-0

*Resolution: 2021 - 111*

J. MANAGER'S REPORT

*Attached Exhibit A*

K. COUNCILOR'S COMMENTS

*Councilor Cubberley – No comment.*

*Councilor Erickson – No comment.*

*Councilor Cormier – No comment.*

*Councilor McPike – No comment.*

*Councilor Jarvi – No comment.*

*Councilor Esposito – Hampden I just want to reiterate that the stop sign means you need to come to a complete stop. I can't tell how many of you people have pulled out in front of me running a stop sign. It's driving me crazy and for you own safety, for your kids safety and for other people's safety, please stop at a stop sign. I can't believe I have to even ask this. Thank you.*

*Councilor Wright – Good evening Hampden, bye American and shop local.*

L. ADJOURNMENT

*Meeting adjourned at 7:48 p.m.*

*Respectfully Submitted,  
Gayle C. Decker, Town Clerk /s/*

Note: Council will take a five-minute recess at 8:00 p.m.



**Memorandum**

TO: Town Council  
FROM: Paula Scott, Town Manager  
DATE: June 7, 2021  
RE: Manager's Report

- According to MDOT, the final touches on the Route 1A and Grist Mill Bridge construction should be complete by the end of this week. We have been made aware that there is an issue with the seeding that was done this year. Apparently, what was delivered this year was pre-seeded, but with broadleaf weeds and not grasses. They have a test section where they are treating weeds to determine the best solution to eradicate the weeds. This might take a few weeks to get to the point that the weeds are not outgrowing the grass seeds.
- The dry hydrant out on Dunton Circle was completed last week. Our FD is going to be hooking into it with a pumper and testing it this week. The sewer line replacement on Western and Dewey has been progressing nicely with very few issues with traffic. On Wednesday morning, beginning at 5:30, the first of the windmill transports for this summer will be coming through town. Again, they will be escorted by State Police and the contractor on our job has been informed. The light bases at the Western Ave. parking lot project have been set, and Wellman will be out there next week to pave.
- David has begun to fill out the application for the bond bank to close out the bond anticipation note through Key Bank. We have had several discussions with bond counsel on what the best way to move forward is in light of the fact that we still have three projects – (Manning Mill and Sawyer Rd. bridges, and the signal) that have not yet begun. Of the 2.5 million approved by the voters, we have only spent a little over 1 million. Thankfully, the bond bank will be treating this as two loans. The proceeds of the first loan will be used to refinance our existing debt for the Business Park water line, and the Town's portion of the Route 1A project. The second bond, for "new money" will fund the three remaining projects. We are in a very tight timeline however, as 5% of the new money will need to be spent, or we will need to have a binding contract signed, within 6 months after we close in November. This is an IRS rule for tax exempt borrowing. Because of that fact, and because we need to get these projects completed so we aren't paying for projects we have not even done, I have asked Victor to fast track the RFPs for the engineering and environmental study portion of both bridge projects. The ad for the RFP will be in the paper on Wednesday. He is next working on the RFP for the signal. By the time the engineers have done their work, and we go through the bid process, we expect that we will be able to sign the contract with the winning firm after the closing in November. It always sounds like a good idea to bond several projects all at once when money is cheap but getting approved for the funds is the easy part. The hard part comes into play when you are trying to not only complete your own projects while competing with other agencies and their timelines, like DOT, but also when you don't have the staff capacity to facilitate them. Also, with tax exempt borrowing, the funds must be 85% spent within three years which can be difficult when there is an excess of projects

because timing does come into play.

- I want to mention the great work that the grounds crew did on the cemeteries in the days leading up to Memorial weekend. When I looked at a couple of them that week, and even the following Tuesday, it was nice to see that they were neat, tidy and respectful. I also would like to thank the VFW for once again placing the flags on Veteran graves. That is a project that is time consuming and requires attention to detail. Lastly, I wish to thank David Ryder for volunteering to replace the seats on the bleachers at the VFW field. We know how much he thinks of Hampden and we thank him for his community service.
- Finally, I want to remind the public that the RSU 22 Budget Validation vote is tomorrow at the Skehan Center. This is a yes/no vote only which is to either accept or reject the budget numbers that were approved at the June 3<sup>rd</sup> district budget meeting. If you didn't get a chance to go to that, you can check with the Town Clerk or the Superintendent's office to find out specifics. Polls are open from 8:00 a.m. until 8:00 p.m.

C-3-a

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
email: clerk@hampdenmaine.gov

June 9, 2021

Circle K  
Mac's Convenience Stores LLC  
63 Main Rd North  
Hampden, ME 04444

RE: Victualer's license

To Whom It May Concern:

Your application for your Victualer's License has been approved. Accordingly, I am enclosing the license, which under Section 5.C of the Town of Hampden Victualer's Ordinance, must be displayed in a place within the establishment where it can be readily viewed by any member of the public.

Please call if you have any questions.

Sincerely,

Gayle C. Decker  
Town Clerk

VICTUALER'S LICENSE CERTIFICATE

No. 2021-10 **MUNICIPALITY OF HAMPDEN, MAINE**  
*To all whom these presents may concern:* Date: June 9, 2021,  
**KNOW YE**, that Mac's Convenience Stores LLC,  
doing business as Circle K  
has been duly licensed as a Victualer at 63 Main Rd North Hampden, ME 04444  
in the Municipality of Hampden by said Municipality until June 9, 2022,  
and has paid to the Municipal Treasurer the fee of \$ 100.00.

Hampden Ridership w/o June

C-3-b

HAMPDEN FISCAL YEAR 2021

MONTH	MONTHLY PASS	STUDENT PASS	CASH	TICKETED	HALF FARE	TRANSFERS	UMAINE	HUSSON
2020-Jul	509	2	276	314	187	309	34	3
2020-Aug	416	0	279	285	193	321	33	0
2020-Sep	320	3	363	274	178	273	12	0
2020-Oct	350	3	377	261	206	301	18	8
2020-Nov	364	2	205	167	146	220	5	1
2020-Dec	310	2	289	194	155	239	9	1
2021-Jan	313	0	260	201	151	231	8	1
2021-Feb	268	1	272	195	148	231	6	0
2021-Mar	325	0	313	197	173	232	39	1
2021-Apr	345	1	191	339	218	197	13	0
2021-May	331	1	178	260	177	215	26	5
TOTAL YTD	3851	15	3003	2687	1932	2769	203	20

EMCC	UMA	BEAL	FREE FARE	TOTAL
9	10	25	0	1678
32	11	30	0	1600
31	12	14	0	1480
37	10	16	0	1587
31	2	3	0	1146
29	3	3	0	1234
22	2	0	0	1189
3	4	0	0	1128
10	0	9	0	1299
5	1	3	0	1313
7	2	0	0	1202
216	57	103	0	14856

PRIOR YEARS FOR COMPARISON					
Month	FY 2020	FY 2019	FY 2018	FY 2017	FY 2016
July	3,066	2,421	2,339	2,594	3,331
Aug	3,049	2,928	2,777	2,878	3,040
Sep	2,939	2,809	2,684	2,851	2,987
Oct	3,255	3,478	2,720	2,774	2,986
Nov	2,898	3,101	2,719	2,932	2,880
Dec	2,981	2,926	2,353	2,897	2,929
Jan	3,016	3,226	2,923	2,844	2,811
Feb	2,653	2,907	2,814	2,455	2,795
Mar	2,179	3,232	2,903	3,004	3,087
Apr	1,084	3,095	2,667	2,458	2,852
May	1,182	3,550	2,945	2,631	2,785
Jun	1,462	3,098	2,643	2,613	3,135
<b>Total</b>	<b>29,764</b>	<b>36,771</b>	<b>32,487</b>	<b>32,931</b>	<b>35,618</b>



memo

**Town of Hampden-Recreation Department**

To: Hampden Town Council  
From: Shelley Abbott; Recreation Director  
CC: Paula Scott; Town Manager  
  
Date: 6/8/2021  
Re: Use of Journey Church Hybrid Hangout Program School Year 2020-2021

The Hampden Recreation Department would like to thank Journey Church for their support of the Hybrid Hangout enrichment program during the 2020-2021 school year. The Hybrid Hangout program provided a critical service this school year for working families needing a safe and supportive solution for students working under the new educational learning model. Journey Church welcomed the Hampden Recreation Department without any hesitation to use their facility during the week to house K-5 students during their hybrid learning days. The Hybrid Hangout program was able to provide educational support, enrichment activities, and physical play opportunities to support local families during the 2020-2021 pandemic school year.

In a world that was constantly changing in the past year, Journey Church's dedication to the community of Hampden and the generosity of the Journey Church leadership team and congregation in sharing support, space, and resources allowed the department to continue to offer services to families needing student support during the pandemic while also simultaneously serving the general population for recreational services at the Skehan Center.

The Town of Hampden and Hampden Recreation Department applaud Journey Church and offers our most sincere thanks for your willingness to partnership in these unprecedented times.

Shelley Abbott  
Recreation Director

**TOWN OF HAMPDEN  
PROPOSED FY 2022  
HAMPDEN TOWN BUDGET**

ACCOUNT NUMBER	ACCOUNT NAME	PROPOSED BUDGET 2022
01-01	ADMINISTRATION	\$730,935
01-02	GIS/IT	\$225,904
01-05	TOWN COUNCIL	\$68,282
01-10	MUNICIPAL BUILDING	\$121,650
01-20	ELECTIONS	\$14,500
01-25	ASSESSING	\$135,886
01-30	ECONOMIC DEVELOPMENT	\$143,615
01-35	PLANNING	\$111,449
05-01	POLICE	\$1,335,046
05-05	FIRE DEPARTMENT	\$1,433,662
05-10	PUBLIC SAFETY	\$354,705
06-06	NON-DEPARTMENT EXPENSES	\$895,154
10-01	PUBLIC WORKS	\$2,028,804
10-10	STORMWATER MANAGEMENT	\$184,700
10-05	MUNICIPAL GARAGE	\$50,185
15-10	SOLID WASTE	\$458,537
20-01	RECREATION	\$629,309
20-10	DYER LIBRARY	\$278,424
20-20	LURA HOIT POOL	\$360,945
20-25	MARINA	\$16,500
25-10	THE BUS	\$101,367
30-10	BUILDINGS & GROUNDS	\$342,222
38-10	OUTSIDE AGENCIES	\$12,000
40-10	GENERAL ASSISTANCE	\$6,000
50-10	DEBT SERVICE	\$503,001
67-10	TIF	\$500,000
70-99	RESERVES	\$384,850
<b>65-10</b>	<b>EDUCATION</b>	<b>\$7,661,727</b>
<b>45-10</b>	<b>COUNTY TAX</b>	<b>\$1,141,446</b>

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<b>MUNICIPAL EXPENSE BUDGET</b>	<b>\$11,427,632</b>
<b>LESS PROJECTED REVENUE</b>	<b><u>\$ (5,496,139)</u></b>
<b>NET MUNICIPAL BUDGET</b>	<b>\$ 5,931,493</b>

<b>EDUCATION</b>	<b>\$ 7,661,727</b>
<b>COUNTY TAX</b>	<b><u>\$ 1,141,446</u></b>
<b>AMOUNT TO RAISE THROUGH TAXATION</b>	<b>\$14,734,666</b>

<b>SEWER ENTERPRISE BUDGET</b>	<b>\$1,253,957</b>
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I - C

Shelby Wright, Mayor (A/L)  
Peter Erickson (1)  
Christine Cubberley (2)

**TOWN OF HAMPDEN**  
**IN THE TOWN COUNCIL**

Eric Jarvi, Deputy Mayor (A/L)  
Ivan McPike (A/L)  
Mark Cormier (3)  
Allen Esposito (4)

**Order 2021-02**

**Adoption: June 21, 2021**

**ORDER PROHIBITING THE USE OF CERTAIN TRAILERS  
AT THE HAMPDEN TRANSFER STATION**

**WHEREAS**, it shall be the policy of the Hampden Town Council to protect the life and safety of residents using the Transfer Station, to promote a safer environment while residents use the facility, and to improve upon the safety concerns of ingress and egress therein.

**IT IS ORDERED**, that the Hampden Town Council, by their vote, shall set the policy to prohibit trailers longer than 10 feet and to prohibit dump trailers of any size at the Hampden Transfer Station.

This order is adopted on June 21, 2021.

Town Clerk:

\_\_\_\_\_  
Gayle Decker

**ORDERED** by a majority of the Town Council:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





## Memorandum

TO: Town Council  
FROM: Paula Scott, Town Manager  
DATE: June 16, 2021  
RE: Broadband bond

The concept of bringing broadband to the Town of Hampden is not a new concept, as it is an initiative that began in 2018. That fact was not known to either myself or the CED Director when, in a Council workshop in 2020, Councilor McAvoy stated that Hampden needed broadband. He spoke of Axiom, the company that Amy has been working with as not only a provider, but also as a company that offers support and education for users. This was echoed by Councilor Marble who was also familiar with Axiom. It was not until Amy contacted Axiom that we realized that this apparently had been a focus in 2018, as the Town had already completed phase 1 but then never continued.

The fact that there are many under served areas in Hampden, or areas with no service, became very evident during the pandemic when many workers were working from home, albeit with difficulty, due to poor or no connectivity. Students were also trying to do school work remotely with the same amount of difficulty. Amy has updated the Council along the way, most recently at Monday's workshop.

To put the initiative in a nutshell, if the Council approves moving forward with this initiative, and if the voters approve it at referendum, the Town will bond \$4.5 million to begin construction in 2023. The municipality would act as a utility and would realize an income based upon the number of subscribers. Based upon the positive feedback Amy has received from the community, she is confident we will reach the target. In the modeling that Amy has demonstrated at prior meetings, the revenue from the utility could pay for the financing with the exception of the first year's payment which could be funded by TIF.

Under Maine law, a municipality is permitted to borrow up to 7.5% of the current municipal valuation for general purposes. Our current outstanding debt load, based upon the last audit is \$4,792,443 which is comprised of \$1,793,450 for general government and the remainder, is proprietary. The 2021 valuation for the Town of Hampden is \$750,700,000 and 7.5% of that is \$56,302,500. Even with considering the portion of the RSUs debt we are responsible for, (\$20,243,466) and separating out proprietary debt, our borrowing capacity is approximately \$52,000,000.

Following this memo, Amy has recapped information that she has previously shared, and what we are looking for is an approval to proceed with retaining bond counsel to construct the borrowing authorization ordinance. The authorization would need to be voted on at public hearing in August in order to have the ballot content ready for the November election.



Town of Hampden  
Economic Development

## MEMORANDUM

To: Town Council

From: Amy Ryder, Economic Development Director

Date: June 9, 2021

RE: Broadband Bond Request

Attached you will review a report from Axiom that describes a review of the system, and how the partnership would work as a partially municipally own fiber system. The cost to build the entire town could be up to \$4.5million, but potentially \$500k less with state funding make ready in underserved areas. It is a 20-year bond and if 1153 subscribers enroll at the minimum package option, it would cover 19 of the 20-year payments. The first year of payment would be paid from the EMERA TIF funds.

It would be my desire to have the full support of council for bond request, so the public could vote in November 2021. This would allow construction as soon as spring of 2023.

The first round of fiber education has gone out to residents and businesses mail last week and I have received a numerous number of emails and phone calls inquiring more information, all of which were excited and in support of the project.

I have reached out to other internet service providers, TDS, SPECTRUM AND UNITEL and none of which can/will do it or have shown serious interest in providing fiber to Hampden.

I look forward to the opportunity to provide ALL of Hampden residents and businesses the same internet speed and connectivity.

Thank you,

Amy Ryder

## THE AXIOM MODEL- Hampden

Axiom is operating or is set to operate several municipally owned or privately funded networks in Maine. The benefit of this model is that municipalities retain ownership and therefore operational oversight of the network. This feature allows a much more collaborative approach with the Internet Service Provider where the goals of the ISP and the community are aligned, and success is mutually beneficial. This model corrects the inequity that has been created by DSL and co-axial cable technology by providing the same world class connectivity and reliability to every home and business in the community. Because it is community driven (owned by Town) and will have superior service to current providers, the formula that this model offers can be very successful- and likely not raise taxes, paying for itself and producing surplus revenues in the future years.

### Ownership- Benefits of Municipally owned

There are several elements that are important to this model that the Broadband Committee and the Town should consider.

#### Municipally owned

- If the network is owned by the community, a new law **exempts you from utility pole make ready cost** in areas with less than 25/3Mbps a potential for savings off the cost of the construction
- Town would fully control the asset, and would have leverage over Axiom, as the operator- examples in other partnership agreements include:
  - **Negotiate Service Agreements** that can specify hours of technical support operations, network monitoring and service standards
  - **Work closely with Axiom to find funding to create an Affordability Fund**, to support disadvantaged families
  - **Work together to discuss various pricing models**
  - **Axiom's model would return a percentage of revenue back to the town to support the bond payback with no new taxes needed to help construct the system** (more in other section of this response)
- Town must be willing to fund with low-cost capital
  - Our model is **based on a municipal bond**- the lowest cost interest rates available
  - Other communities have considered low-cost bank financing, but our experience is the cost of bonding is extremely low and beats even the best bank finance option, that said, the numbers are encouraging and might support a bank interest rate depending on the cost of that money
- Town must be willing to **enter into a partnership agreement with Axiom** to provide exclusive service over the network under a long-term contract, typically 12 years, with a kick-out clause every 3 years, or at any time Axiom fails to meet its obligations.
  - This ensures a robust payback of the bond, with no tax dollars needed, over the 20-year term of the bond
  - In exchange for exclusive operating rights on the system, Axiom would provide a per customer payback to the town to support the full cost of the bond payments

## Obligations of each party

### Municipal responsibilities

- Own and insure the main backbone and fiber equipment (est. yearly cost of \$10,000- \$15,000) or Axiom can insure on behalf of the Town- likely at a lower cost
- Work closely with ISP on marketing efforts and take rates
- Promote ISP and early commitments to the new system
- Commit to a long-term contract with the ISP to exclusively serve the community
- Develop and maintain expectations for ISP engagement and pricing for citizens

### ISP responsibility

- Repair and maintain all fiber drop and home equipment at Axiom's cost
- Employ a local technician to support timely responses to customer issues
- Coordinate all operational and managerial responsibility for the system
- Return a per customer portion of revenue back to the community to service debt
- Maintain proper insurance as required of an ISP

Questions typically asked about municipally owned networks:

#### 1. What are the risks?

- Subscribers are critical to the success. One risk is the estimated subscribers falls short.
  - Currently Axiom has modeled a 50% take rate in Year #1 of service- approximately 938 subscribers- converting the areas of non-Spectrum served areas should help reach this take rate significantly
  - We have priced the service very competitively
- During the year of construction, Town will owe bond payments, without subscriber revenue
  - Grants, American Rescue Funds, and other sources should eliminate this first-year cost
- Some residents may not be able to afford subscription fees
  - Axiom will work closely with the town to identify funding sources to reduce monthly subscription fees to needy families
    - Axiom has successfully attracted funding to establish a \$20,000 fund which we are using in Washington County now
- Cost of hookup after the initial construction year will be prohibitive
  - Axiom is working closely with a couple of towns to provide lower-cost hookup periods after construction is complete
  - Town could use surplus revenues in future years to defray some or all hook up costs
- Spectrum undercuts Axiom pricing and keeps a large portion of customers
  - First, we think this is very unlikely... however...
  - We would switch people to fiber and allow them to keep the same plan that they currently have with Spectrum internet, if Spectrum decides to offer a lower cost offering

### Upfront Costs

- The objective is a project fully paid for by subscribers, not taxpayers

- Because Axiom will generate subscriber fees and use a portion of those fees to pay back the bond- the initial cost of the project is not the true cost- it's over 90% less
- The belief is that any "gaps" in the cost could be covered by grants, Rescue plan funds - to be determined.

Estimated construction cost: \$5,318,000  
 15% of total cost in grant or mix of funds (\$750,000)  
 Borrow amount (\$5M-\$500k)= \$4,568,000

#### Assumptions

- Cost of make ready reduced because this would be municipally owned- savings estimated at \$500,000
- Pole replacements are estimated and can flex lower or higher, potentially reducing the amount borrowed even further
- Drops to the home cost are determined at a 60% take rate- approximately 1125 potential customers
- You are eligible for a ConnectMaine grant in area not served by Spectrum that will reduce this estimate substantially- possibly beyond the 15% estimated reducing the cost of the bond to \$4.5M (ConnectMaine grant of \$750,000)
- Borrow \$4,500,000 for 20 years

Date	Principal	Rate	Interest	Total Payment	FY Total Bond payment	Revenue from Subscribers returned to Town	GAP (in red) or Surplus
05/1/2022			\$40,698.80	\$40,698.80			
11/1/2022	\$228,401.10	0.5500%	\$39,513.40	\$267,914.50	\$308,613.30	\$0	(\$308,613)
05/1/2023			\$38,885.30	\$38,885.30			
11/1/2023	\$228,401.10	0.5800%	\$38,885.30	\$267,286.40	\$306,171.70	\$309,540	\$3369
05/1/2024			\$38,222.93	\$38,222.93			
11/1/2024	\$228,401.10	0.6200%	\$38,222.93	\$266,624.03	\$304,846.96	\$333,960	\$29,114
05/1/2025			\$37,514.89	\$37,514.89			
11/1/2025	\$228,401.10	0.6800%	\$37,514.89	\$265,915.99	\$303,430.88	\$345,840	\$42,410
05/1/2026			\$36,738.32	\$36,738.32			
11/1/2026	\$228,401.10	0.7900%	\$36,738.32	\$265,139.42	\$301,877.74	\$358,050	\$56,173
05/1/2027			\$35,836.14	\$35,836.14			
11/1/2027	\$228,401.10	0.9300%	\$35,836.14	\$264,237.24	\$300,073.38	\$358,050	\$57,977
05/1/2028			\$34,774.07	\$34,774.07			
11/1/2028	\$228,401.10	1.0800%	\$34,774.07	\$263,175.17	\$297,949.24	\$358,050	\$60,101
05/1/2029			\$33,540.71	\$33,540.71			
11/1/2029	\$228,401.10	1.2300%	\$33,540.71	\$261,941.81	\$295,482.52	\$358,050	\$62,568
05/1/2030			\$32,136.04	\$32,136.04			
11/1/2030	\$228,401.10	1.3900%	\$32,136.04	\$260,537.14	\$292,673.18	\$358,050	\$65,377
05/1/2031			\$30,548.65	\$30,548.65			
11/1/2031	\$228,401.10	1.5200%	\$30,548.65	\$258,949.75	\$289,498.40	\$358,050	\$68,552
05/1/2032			\$28,812.80	\$28,812.80			
11/1/2032	\$228,401.10	1.8780%	\$28,812.80	\$257,213.90	\$286,026.70	\$358,050	\$72,024
05/1/2033			\$26,668.12	\$26,668.12			

11/1/2033	\$228,401.10	2.1350%	\$26,668.12	\$255,069.22	\$281,737.34	\$358,050	\$76,313
05/1/2034			\$24,229.94	\$24,229.94			
11/1/2034	\$228,401.10	2.3180%	\$24,229.94	\$252,631.04	\$276,860.98	\$358,050	\$81,190
05/1/2035			\$21,582.77	\$21,582.77			
11/1/2035	\$228,401.10	2.4470%	\$21,582.77	\$249,983.87	\$271,566.64	\$358,050	\$86,484
05/1/2036			\$18,788.28	\$18,788.28			
11/1/2036	\$228,401.10	2.5680%	\$18,788.28	\$247,189.38	\$265,977.66	\$358,050	\$92,073
05/1/2037			\$15,855.61	\$15,855.61			
11/1/2037	\$228,401.10	2.6750%	\$15,855.61	\$244,256.71	\$260,112.32	\$358,050	\$97,938
05/1/2038			\$12,800.75	\$12,800.75			
11/1/2038	\$228,401.10	2.7320%	\$12,800.75	\$241,201.85	\$254,002.60	\$358,050	\$104,048
05/1/2039			\$9,680.79	\$9,680.79			
11/1/2039	\$228,401.10	2.7840%	\$9,680.79	\$238,081.89	\$247,762.68	\$358,050	\$110,288
05/1/2040			\$6,501.44	\$6,501.44			
11/1/2040	\$228,401.10	2.8310%	\$6,501.44	\$234,902.54	\$241,403.98	\$358,050	\$116,647
05/1/2041			\$3,268.42	\$3,268.42			
11/1/2041	\$228,401.10	2.8620%	\$3,268.42	\$231,669.52	\$234,937.94	\$358,050	\$123,113
<b>TOTALS</b>	<b>\$4,568,022.00</b>		<b>\$1,052,984.14</b>	<b>\$5,621,006.14</b>			

#### Explanation of Chart

This chart is derived from the Maine Municipal Bond Bank calculator. The calculator allows you to input the amount you are expecting to borrow (\$4,568,000), the number of years (20) and the Town's fiscal year so that the payments correspond with town finances and expectation for payments.

The last three columns should be your focus. "FY Yearly bond payment" is the yearly borrowing cost of the bond. This is the payment that needs to be covered by the next column, which is the amount of subscriber revenue returned to the Town, to cover that payment.

The last column is the amount of deficit (Year 1 in RED) and the amounts of surplus that is returned above and beyond the amount needed to cover the bond debt payment.

In Year 1, when you borrow the money, no revenue would be derived because that is the year the system would be built. That is why that payment would not be covered. Because it is a relatively small amount, I believe that there would be funds that could be raised or applied for to cover that first-year gap.

Over the next 19 years, the payments create a total surplus of just shy of \$1.1M.

These are the funds that could be used to create an Affordability Fund, pay for equipment spares and replacement and insurance.

In essence, the system pays for itself and then some after Year 1 of construction and revenue is starting to be derived by subscribers- AND the Town owns the system.

## Repayment Structure

Our repayment structure, which is in place and operational in other projects, provides for quarterly payments for year-round subscribers and a one-time bulk payment for all seasonal subscribers in June of each year (not sure you have many seasonal subscribers)

In this way, the town can expect a check from us in the following month of the Quarter for the previous 3 months of revenue collected. And once all seasonals have paid (they get billed in March for a May-October seasonal rate) we write a check for all seasonals in June once all revenue has been collected.

We would provide a list of customers, if requested, to match up the revenue return calculation and to check our work to ensure full payment is being received by the Town.

## Repair Obligation

All repairs will be the responsibility of Axiom to coordinate and oversee. Axiom will repair all drops (lines from the utility pole to each home) and the customer premise equipment with no pass on cost to the Town.

For catastrophic repairs of the main trunk line, those types of issues are typically expensive and could trigger an insurance claim, whoever is holding this insurance would be responsible for the co-pay. It may be cheaper for Axiom to insure the system, but the responsibility of any claim would be on the owner. So, any co-pays (typically \$1000) would be passed on to the Town. However, surplus revenues will easily cover any insurance claim. If you would like Axiom to insure the system, we would need to work with you to determine the cost of that and where the responsibility for the co-pay/deductible would be. Certainly, with a little discussion, I believe we can come to a reasonable solution for both parties. The liability here is relatively small (\$1000 per claim).

## Customer Service Offering

Our revenue modeling is based on these subscriber rates:

### Year Round

50/50Mbps	\$59.99
100/100Mbps	\$79.99
500/500Mbps	\$149.99
1G/1G	\$199.99

### Seasonal

50/50Mbps	\$50.99/ \$611.99 annually
100/100Mbps	\$67.99/ \$815.99 annually
500/500Mbps	\$127.49/ \$1529.99 annually

Seasonal service is fixed for 6 months from May 1<sup>st</sup> thru November 1<sup>st</sup>. Those requiring extended service are encouraged to take a year-round plan.

### Business Rates

50/50Mbps	\$99.99
100/100Mbps	\$119.99
500/500Mbps	\$199.99



## Expected Speeds of Service

Axiom would build a world class fiber system that would bring best-in-class reliability and deliver unrivaled bandwidth to Hampden. Axiom would guarantee that each subscriber would receive their total bandwidth purchased- even in the heaviest usage times. This would not be an “up to” or “best effort” service. If you subscribe to receive 500/500Mbps- you will be able to test that and always receive your bandwidth, day or night, summer, or winter.

The system will be built to deliver symmetrical service to each home, meaning we are offering symmetrical (same speeds uploading and downloading) at no additional cost to the subscriber and each subscriber will be capable of receiving a 1Gig/1Gig (1000/1000Mbps) from day one. The system will include a handful of ports capable of delivering 10/10Gig service (10,000/10,000Mbps), making the system futureproof for many years to come without additional investments needed.

We are including pricing for a Gig tier of service, but from a practical matter, 500/500Mbps delivered through fiber is a level of connectivity that few in the world have had a chance to experience, but there may be a few Hampden residents who want to have the full Gig experience and we can customize rates for different types of service. We will work with you to determine if a different or expanded rate group is needed, or necessary.

## Time to Install

Here is a general timeline from when money is received to construct the system.

- Pole licensing and make ready- 6 to 7 months
- Construction- 5-6 months
- Home connections- 3-5 months

Total time once money is secured- 14 months to 18 months for all subscribers to be hooked up and service is operational.

## Assistance with Grants

Axiom has vast experience working with communities to identify, apply for and be awarded grants at the local, state, and federal level.

Axiom has been integral in supporting winning grants with USDA, EDA, Northern Border Commission, CARES Act, ConnectMaine planning and infrastructure funds, Island Institute, Microsoft Airband Initiative, and the Maine Community Foundation.

We obviously cannot “promise” success, but we have a very good track record. In our assumptions, we suggest that this project would have a good opportunity to attract \$750,000 in funding. I believe you have all the ingredients to be successful and Axiom will stand side by side and heavily support any applications that would reduce the cost of the build or support ongoing operations, including an Affordability Fund.

## Final Thoughts

In summary, Axiom is very much committed to municipally owned broadband and being a strong partner with the community. We are committed to municipally owned networks because we believe networks that are controlled by the community, produces better consumer experiences, and force

the contracted ISP to be more responsive to issues. My desire is to bring better connectivity than Bangor, Portland or New York City and help the community own an asset that they can be proud of and give Hampden an investment that will last for generations.

- No increase in taxes
- Strong opportunity for grant funding to reduce the cost
- Competitive pricing for subscribers
- A community minded partner that cares deeply about the communities we serve

If you have any questions or wish to engage Axiom in further discussions, do not hesitate to reach out to me at (207)272-5617 (m) or [mark@connectwithaxiom.com](mailto:mark@connectwithaxiom.com)



**TOWN OF HAMPDEN**  
**DEPARTMENT OF PUBLIC WORKS**

106 WESTERN AVE.  
HAMPDEN, ME 04444

TEL 862-3337

FAX 862-5067

June 14, 2021

To: Paula Scott  
From: Victor J. Smith, P.E.  
Subject: Hydraulic Mulching Head

On June 9th, the Town of Hampden publicly opened a bid for a hydraulic mulching head to fit on our John Deere 310 SL backhoe. There was one bidder and NORTRAX was the only bidder at \$21,500 for a FAE BL1/EX-075 VT Universal Mulcher. I have included the Bid Tab for your information.

I recommend that the Town of Hampden accept the bid from NORTRAX. The hydraulic mulching head will operate efficiently on our machine and will be very useful for the maintenance of our ROW's.

**TOWN OF HAMPDEN**  
**HYDRAULIC MULCHING HEAD**  
**BID TAB**  
**BID OPENED JUNE 9, 2021**

<b>BIDDER</b>	<b>EQUIPMENT</b>	<b>BID AMOUNT</b>
NORTRAX	FAE-BL1/EX-075 Universal Mulcher	\$21,500

EXHIBIT A  
FORM OF CERTIFICATE OF TOWN

I-f

Bangor Savings Bank (Institutional Trustee)  
c/o Julie A. Shephard, Account Administrator  
5 Senator Way  
Augusta, ME 04330

Re: Demand for Funds Pursuant to Trust Indenture Dated as of October 1, 1991 between Town of Hampden, as Grantor and Bangor Savings Bank, as Institutional Trustee (the "Trust Indenture")

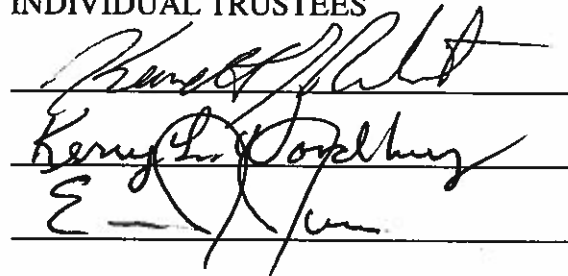
Gentlepersons:

This certificate is provided to you pursuant to the above-referenced Trust Indenture. Capitalized terms used herein without definition shall have the meaning set forth in the Trust Indenture.

The undersigned do hereby certify:

1. That they are the Individual Trustees of the Trust.
2. The Individual Trustees have approved use of property held in the Fund for purposes set forth in the Trust Indenture, in the amount set forth below.
3. You are hereby directed to pay from the **Environmental Trust, Income** to the Town of Hampden the sum of \$1,238.40.

INDIVIDUAL TRUSTEES



CERTIFICATE OF TOWN CLERK

The undersigned DOES HEREBY CERTIFY:

1. That he/she is the duly appointed and incumbent Clerk of the Town of Hampden, Maine.
2. That the foregoing certificate of the Individual Trustees was duly approved by a majority of the members of the Town Council of the Town of Hampden on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Gayle Decker  
Clerk, Town of Hampden

cc: Town of Hampden



Paula Scott &lt;townmanager@hampdenmaine.gov&gt;

I-9

## Brown Tailed Moths/Caterpillars Problem

2 messages

Avery Caldwell &lt;avery.caldwell@icloud.com&gt;

Tue, Jun 15, 2021 at 2:55 PM

To: Paula Scott &lt;townmanager@hampdenmaine.gov&gt;

Hi Paula:

I brought this matter to the attention of Ryan Carey some days ago. My homestead was targeted badly. He suggested I discuss with my counsel member, Allen Esposito, and that the matter be brought to the Council for discussion.

Joyce and I have been investigating. Clearly this is a complex problem, it appears to be getting worse across Maine and in our region, and it threatens to be with us for a long time. I have attached a few emails with Allen below for your reference.

Please let me know if I can be of further assistance.

Avery

Begin forwarded message:

**From:** Avery Caldwell <avery.caldwell@me.com>**Date:** June 9, 2021 at 3:56:00 PM EDT**To:** Allen Esposito <espositotowncouncil@hampdenmaine.gov>**Subject:** Hampden Problem - Brown Tailed Moths (caterpillars), BTM

Mr. Esposito:

If you have not been affected by these buggers, count your blessings!

I live on the Emerson Mill Rd (#150), and a quick drive down the road will give you a picture of the devastation then can cause in a couple of days. Ryan Carey, Hampden Code Officer, suggested that I get in touch with you as this is likely an issue that needs to go before the Council.

Here is a link to Maine State Forestry resources:

[https://www.maine.gov/dacf/mfs/forest\\_health/invasive\\_threats/browntail\\_moth\\_faqs.htm#:~:text=The%20Maine%20Forest%20Service%20recommends%20contracting%20with%20a%20licensed%20pesticide,exposures%20to%20the%20toxic%20hairs.](https://www.maine.gov/dacf/mfs/forest_health/invasive_threats/browntail_moth_faqs.htm#:~:text=The%20Maine%20Forest%20Service%20recommends%20contracting%20with%20a%20licensed%20pesticide,exposures%20to%20the%20toxic%20hairs.)

My sense from my conversation with Ryan is that the town is just awakening to the hazard that it faces. These buggers can strip a 100+ ft. oak of all leaves within two days. It is amazing. We have lost 8 to 10 trees in the past two weeks. Many others on the Emerson Mill Rd have been affected. But I think my place is one of the worst.

The BTM has been a plague on Maine and other NE states since the late 19th century. It appears from my limited reading that it has grown significantly worse in recent years. The life of the BTM is complex, and I am not an entomologist. But the issue needs to be addressed in a timely manner, or lasting damage can occur.

More than the impact on trees and forest, there is a significant health risk to the community from the toxic hairs on the caterpillars. I have an incredible rash on my arms that is spreading. It can effect some people's breathing as well necessitating hospitalization.

There are no simple fixes especially for large, tall trees. I have just done a little research, but it appears limited agricultural crop dusting techniques may be the most cost effective solution if implemented on a

large enough scale in a safe manner.

Please give me a call and I'll share whatever information I can. I do hope you can bring this before the Council at their next meeting.

Thank you.

Sincerely yours,

Avery Caldwell

150 Emerson Mill Rd

Allen:

It was good to talk to you last evening. As I explained, this problem will probably be with the town for many years, and we have a lot to learn about in coping with it. Please let me know if I can be of further assistance. I'd be please to help with any community effort and am probably one of the more enlightened citizens at this point. I also neglected to mention the sudden, almost Biblical, death of thousands of these buggers within 48 hours. At this point unexplained.

Avery

On June 14, 2021 at 7:38 PM, Avery Caldwell <[avery.caldwell@me.com](mailto:avery.caldwell@me.com)> wrote:

Allen,

Thanks for calling today. I tried to leave a message with the number you left, but the voice mail was not set up.

My concern now is to just get an item on the Town Counsel agenda for next week so that the discussion could get started. My sense is that we have a lot to learn and this problem could be with the Town for years to come.

I'm heading out for a couple of hours this evening. Call anytime before 9. Otherwise let's try again tomorrow.

Avery Caldwell

Sent from my iPhone

---

**Paula Scott** <[townmanager@hampdenmaine.gov](mailto:townmanager@hampdenmaine.gov)>

Tue, Jun 15, 2021 at 3:22 PM

To: Avery Caldwell <[avery.caldwell@icloud.com](mailto:avery.caldwell@icloud.com)>

Avery,

Thank you for your email. You are correct, this is a complex problem and one that may be with us for a while. From what I understand, the pesticide use on the caterpillars should have been done during the last week of May. Destroying the moths themselves seems trickier. Your information says they can be vacuumed with a hippa filter vacuum, but I would imagine that would be for small numbers. Have you reported your infestation to the Maine Forest Service?

I am not sure what the Town Council will be able to do, but I can certainly add your request to the agenda for the meeting on the 21st. It will begin at 6:00 and you may either remote in (instructions will be posted with the packet) or you may come in person to address the Council.

Thank you,  
Paula A. Scott  
Town Manager  
Treasurer

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444  
Tel: (207) 862-3034

6/17/2021

Town of Hampden Mail - Brown Tailed Moths/Caterpillars Problem

**Fax: (207) 862-5067**

[Quoted text hidden]





## **Memorandum**

TO: Town Council  
FROM: Paula Scott, Town Manager  
DATE: June 17, 2021  
RE: Moratorium

As referred from the Council workshop, following this memo is a proposed moratorium on multi-family housing and cluster subdivisions in the rural district. The moratorium, if passed, would last for up to 6 months, but may be ended sooner upon adoption of a regulation within a land use ordinance which is deemed adequate to prevent harm. It may also be extended if reasonable progress is being made to alleviate the problem which required the moratorium if the solution has not yet been completed. (30-A, § 4356)

Included with this is a memorandum from Clifton with two versions of a potential amendment to the Subdivision Ordinance to address the concerns surrounding fire protection for these types of development. We look forward to discussing them with you and getting a better sense of direction from the Council so that we might soon bring the ordinance to public hearing.

**TOWN OF HAMPDEN  
EMERGENCY MORATORIUM ORDINANCE REGARDING  
MULTI-FAMILY DEVELOPMENT AND CLUSTER SUBDIVISIONS WITHIN THE  
RURAL DISTRICT**

WHEREAS the legislative body of the Municipality of Hampden (the "Municipality") makes the following findings:

- (1) The town's rural district does not have a public water system supplied by the Hampden Water Department which would provide water for fire suppression purposes; nor does the town have a system of alternative water supply sources currently in existence to protect the life and safety of residents residing within multi-family developments or cluster subdivisions in the rural district; and
- (2) The Zoning Ordinance addresses the requirement for water supply without a clear definition for both potable water as well as that which is for fire suppression; that there are several means by which fire suppression requirements might be met by the developer and which should be incorporated into the Zoning Ordinance; that the Planning Board does not have the authority to approve any development that will result in the town incurring costs specifically for infrastructure in order to allow the development to occur; and
- (3) As a result of the foregoing issues, the location of multi-family developments or cluster subdivisions outside of the hydrant district within the Municipality has potentially serious implications for the health, safety and welfare of the Municipality and its residents; and
- (4) The Municipality currently has no ability to systematically provide water for fire suppression services in a manner that is consistent with the speed of development, and existing ordinances are insufficient to prevent serious public harm that could result; and
- (5) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of the inability of developers to provide adequate fire suppression capability in a manner consistent with acceptable means such as fire ponds, cisterns, dry hydrants, or sprinkler systems; and
- (6) In the judgment of the legislative body of the Municipality, the foregoing findings and conclusions constitute an emergency within the meaning of 30-A M.R.S. § 4356 requiring immediate legislative action.

NOW THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the Municipality as follows:

**Section 1. Moratorium.** The Municipality does hereby declare a moratorium on the, permitting, or approval of any and all multi-family developments or cluster subdivisions within the rural district. No person or organization shall develop a multi-family development or a cluster subdivision within the rural district on or after the effective date of this Ordinance. During the time this Ordinance is in effect, no officer, official, employee, office, administrative board or

agency of the Municipality will accept, process, approve, deny, or in any other way act upon any application for a building permit, conditional use, site plan, or any other type of land use approval or permit and/or any other permits related to multi-family development or cluster development within the rural district.

**Section 2. Definitions.** For purposes of this ordinance, the term “multi-family development” means a development that consists of three or more dwelling units in one or more buildings on a single parcel of land. This includes developments with two or more two-family buildings on a single parcel. The term “cluster subdivision” means a method of land subdivision and development in which a developer is allowed to vary certain site development specifications such as lot size requirements in return for providing more open space and better site design than would result from conventional subdivision and development practices.

**Section 3. Pending Proceedings.** Notwithstanding any law to the contrary, this Ordinance governs any proposed development of multi-family development or cluster subdivision for which an application for a building permit, certificate of occupancy, conditional use, site plan or any other required approval has been submitted to the Municipality, whether or not a pending proceeding, prior to the enactment of this Ordinance.

**Section 4. Conflicts/Savings Clause.** Any provisions of the Municipality’s ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

**Section 5. Effective Date.** This Ordinance becomes effective immediately upon its adoption and will remain in full force and effect for a period of 180 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the Municipality, whichever first occurs.



Town of Hampden  
Land & Building Services

**Memorandum**  
**Draft Subdivision Amendment**

To: Town Council  
 From: Clifton J. Iler, AICP, Town Planner  
 CC: Paula Scott, Town Manager  
 Ryan Carey, Code Enforcement Officer  
 Chris Bailey, Director of Public Safety  
 Jason Lundstrom, Deputy Fire Chief  
 Date: June 21, 2021  
 RE: Draft Subdivision Amendment – Fire Protection

**Introduction:**

The Town of Hampden does not have adequate water supply sources, neither via a public water system supplied by the Hampden Water Department nor via private water systems, to protect the life and safety of residents residing within multi-family developments in the Rural District. Existing ordinances are insufficient to prevent serious public harm that could result from inadequate fire suppression.

The purpose of this memorandum is to provide draft language that would constitute an amendment to the Subdivision Ordinance for the provision of fire protection in multi-family developments in the Rural District.

**Description:**

The Town Council discussed providing adequate water supply sources for fire suppression at its workshop on 14 June 2021. Two versions of draft language have been developed by staff for the discussion of the Town Council, using the *Model Subdivision Regulations for Use by Maine Planning Boards, Article 10 - Performance & Design Standards*:

- Version A (Attachment A) – A draft amendment where the applicant is responsible for the construction of the water supply system and the Municipality is responsible for its maintenance.
- Version B (Attachment B) – A draft amendment where the applicant is responsible for the construction of the water supply system and its maintenance, unless sold to an individual lot owner.
- *Model Subdivision Regulations for Use by Maine Planning Boards, Article 10 - Performance & Design Standards* (Attachment C) included for Town Council review.

**Note:** Relevant sections on fire protection included on Pages 10-4 through 10-8.

## 2.3 Infrastructure

**2.3.1 Electric and Communication Utilities.** Wherever possible, electric and communication utilities are to be placed underground and designed and installed within the street right-of-way but not under the pavement, in accordance with the regulations and standards of the applicable utility company. When underground placement is not possible, it is the applicant's responsibility to provide proof to the Planning Board that underground placement is impractical.

## 2.3.2 Water Supply

### 2.3.2.1 Public Water Supply:

1. All tracts proposed to be subdivided that are within 500 feet of the public water system must be connected to that system unless the Hampden Water District determines it has insufficient capacity to serve the population of the development. In such cases the Planning Board may approve private wells in accordance with §3.2.1.2, or a separate public water system to be owned and maintained by the developer or Homeowner's Association is installed to serve the development.
2. The water supply infrastructure including mains, gate valves, hydrants, and service connection stubs (to the lot line) must be designed to the specifications of, and approved by, the Hampden Water District and the Hampden Public Safety Department. All costs associated with the design and construction are the responsibility of the applicant.
3. When the off-site water system infrastructure proposed to be connected to is inadequate to serve the needs of the proposed development, the applicant must pay the cost of upgrades to the existing system as necessary to serve the potable and fire suppression needs of the subdivision.
4. Water supply infrastructure should be located within the road right-of-way but not under the pavement to the greatest extent possible, and where it deviates, an easement must be provided to the Hampden Water District in accordance with their requirements.
5. When a proposed subdivision is located in an area not currently served by the Hampden Water District but where infrastructure extension is planned within the following 15 years, a "capped system" must be installed to allow future connection when service becomes available without the need to excavate the right-of-way to install the system.
6. For subdivisions where there is a high probability that additional development will occur (by the applicant or any other person or entity) that would only have access to the public water system through the proposed system, the water infrastructure should be designed and built to provide for the needs of said future development. In such cases, the Planning Board

may consult with the Hampden Water District and the Public Works Department to determine whether there is any possibility for cost sharing for the larger pipes and fittings made necessary by such planning for the future. Construction of the infrastructure that does not provide for such future extension may preclude future development on affected lands.

7. ~~All subdivisions, regardless of size, must provide an adequate water supply for fire suppression which must be approved by the Hampden Public Safety Department, and the Department of Public Works whenever fire hydrants are proposed, prior to final approval of the subdivision by the Planning Board. Where the public water supply is insufficient to meet the needs of the Public Safety Department, an alternative water supply is required; see §2.3.1.2.6 below.~~

#### 2.3.2.2 Private Water Supply

1. Wherever a proposed subdivision is located in an area without access to the public water supply, or when the Hampden Water District determines there is insufficient capacity to serve the population of the proposed subdivision, either individual private wells or a private community system (which may be deemed a public water supply based on the number of dwelling units served) must be used to provide potable water to each dwelling.
2. Individual wells are to be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
3. The Planning Board may require certification that sufficient water is available for the foreseeable needs of the subdivision.
4. Lot design must permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules (10-144 CMR 241) and the Well Drillers and Pump Installers Rules (144 CMR 232).
5. Dug wells are prohibited. This restriction must be included as a note on the final subdivision plan and as a deed restriction in each deed for the lots within the subdivision.
6. If a private community system is provided that meets the definition of a public water supply, the location and protection of the source, and the design, construction and operation of the system must conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
7. ~~The subdivision must provide for a reliable water supply for fire suppression purposes. Acceptable methods include, but are not limited to, fire ponds~~

~~with an approved dry hydrant, other water sources with an approved dry hydrant, underground storage tanks designed specifically for this purpose, or approved residential sprinkler systems in each dwelling unit. The design and location of the fire suppression infrastructure must be reviewed and approved by the Public Safety Department and the Department of Public Works. The maintenance and repair of the infrastructure, if located on site, is the responsibility of a Homeowner's Association, with periodic inspections by the Public Safety Department. Where necessary, an easement must be granted to the Town for access to fire suppression infrastructure.~~

## 2.3.3 Fire Protection

### 2.3.3.1 Administration:

1. The Planning Board, the Hampden Fire Department, or the Code Enforcement Officer are responsible for the administration of this ordinance, as appropriate.
2. The Reviewing Authority may modify or waive any of the application requirements or performance standards upon submittal of evidence that such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant and not adversely affect the abutting landowners and the general health, safety, and welfare of the Town.

### 2.3.3.2 Public Water Supply:

1. When a proposed subdivision is to be served by a public water system, the complete supply system within the subdivision, including the fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the servicing water district and the Hampden Fire Department. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.

### 2.3.3.2 Private Water Supply:

1. When a proposed subdivision is not to be served by a public water system, adequate water storage facilities shall be provided to support a fire suppression system. These facilities shall be installed at the expense of the applicant.
  - a. Facilities may be ponds with dry hydrants, underground reservoirs, sprinkler systems, or other methods acceptable to the Reviewing Authority.
  - b. A minimum storage capacity of 10,000 gallons shall be provided for a subdivision not served by a public water supply. Additional storage of 2,000 gallons per lot or principal building shall be provided. The Reviewing Authority may require additional storage capacity upon recommendation from the Hampden Fire Department.

- c. Where ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice.
- d. Where ponds, dry hydrants, or reservoirs are constructed, an easement shall be granted to the municipality granting access to and maintenance where necessary. A suitable accessway to the hydrant or other water source shall be constructed.
- e. A detailed plan of the required pond, dry hydrant, piping, accessways, or other provisions, bearing the stamp of a registered Professional Engineer, shall be submitted as part of the application. Hydrants or other provisions for drafting water shall be provided to the specifications of the Hampden Fire Department.
- f. Sprinkler systems to be installed in any construction subject to this ordinance shall comply with the applicable standard as approved by the Office of the State Fire Marshal; edition as adopted by the Maine State Fire Marshal's Office at the time of issuance of a building permit. Maintenance of individual sprinkler systems shall be the responsibility of the individual owner.



## 2.3 Infrastructure

2.3.1 Electric and Communication Utilities. Wherever possible, electric and communication utilities are to be placed underground and designed and installed within the street right-of-way but not under the pavement, in accordance with the regulations and standards of the applicable utility company. When underground placement is not possible, it is the applicant's responsibility to provide proof to the Planning Board that underground placement is impractical.

## 2.3.2 Water Supply

### 2.3.2.1 Public Water Supply:

1. All tracts proposed to be subdivided that are within 500 feet of the public water system must be connected to that system unless the Hampden Water District determines it has insufficient capacity to serve the population of the development. In such cases the Planning Board may approve private wells in accordance with §3.2.1.2, or a separate public water system to be owned and maintained by the developer or Homeowner's Association is installed to serve the development.
2. The water supply infrastructure including mains, gate valves, hydrants, and service connection stubs (to the lot line) must be designed to the specifications of, and approved by, the Hampden Water District and the Hampden Public Safety Department. All costs associated with the design and construction are the responsibility of the applicant.
3. When the off-site water system infrastructure proposed to be connected to is inadequate to serve the needs of the proposed development, the applicant must pay the cost of upgrades to the existing system as necessary to serve the potable and fire suppression needs of the subdivision.
4. Water supply infrastructure should be located within the road right-of-way but not under the pavement to the greatest extent possible, and where it deviates, an easement must be provided to the Hampden Water District in accordance with their requirements.
5. When a proposed subdivision is located in an area not currently served by the Hampden Water District but where infrastructure extension is planned within the following 15 years, a "capped system" must be installed to allow future connection when service becomes available without the need to excavate the right-of-way to install the system.
6. For subdivisions where there is a high probability that additional development will occur (by the applicant or any other person or entity) that would only have access to the public water system through the proposed system, the water infrastructure should be designed and built to provide for the needs of said future development. In such cases, the Planning Board

may consult with the Hampden Water District and the Public Works Department to determine whether there is any possibility for cost sharing for the larger pipes and fittings made necessary by such planning for the future. Construction of the infrastructure that does not provide for such future extension may preclude future development on affected lands.

7. ~~All subdivisions, regardless of size, must provide an adequate water supply for fire suppression which must be approved by the Hampden Public Safety Department, and the Department of Public Works whenever fire hydrants are proposed, prior to final approval of the subdivision by the Planning Board. Where the public water supply is insufficient to meet the needs of the Public Safety Department, an alternative water supply is required; see §2.3.1.2.6 below.~~

#### 2.3.2.2 Private Water Supply

1. Wherever a proposed subdivision is located in an area without access to the public water supply, or when the Hampden Water District determines there is insufficient capacity to serve the population of the proposed subdivision, either individual private wells or a private community system (which may be deemed a public water supply based on the number of dwelling units served) must be used to provide potable water to each dwelling.
2. Individual wells are to be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
3. The Planning Board may require certification that sufficient water is available for the foreseeable needs of the subdivision.
4. Lot design must permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules (10-144 CMR 241) and the Well Drillers and Pump Installers Rules (144 CMR 232).
5. Dug wells are prohibited. This restriction must be included as a note on the final subdivision plan and as a deed restriction in each deed for the lots within the subdivision.
6. If a private community system is provided that meets the definition of a public water supply, the location and protection of the source, and the design, construction and operation of the system must conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
7. ~~The subdivision must provide for a reliable water supply for fire suppression purposes. Acceptable methods include, but are not limited to, fire ponds~~

~~with an approved dry hydrant, other water sources with an approved dry hydrant, underground storage tanks designed specifically for this purpose, or approved residential sprinkler systems in each dwelling unit. The design and location of the fire suppression infrastructure must be reviewed and approved by the Public Safety Department and the Department of Public Works. The maintenance and repair of the infrastructure, if located on site, is the responsibility of a Homeowner's Association, with periodic inspections by the Public Safety Department. Where necessary, an easement must be granted to the Town for access to fire suppression infrastructure.~~

### 2.3.3 Fire Protection

#### 2.3.3.1 Administration:

1. The Planning Board, the Hampden Fire Department, or the Code Enforcement Officer are responsible for the administration of this ordinance, as appropriate.
2. The Reviewing Authority may modify or waive any of the application requirements or performance standards upon submittal of evidence that such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant and not adversely affect the abutting landowners and the general health, safety, and welfare of the Town.

#### 2.3.3.2 Public Water Supply:

1. When a proposed subdivision is to be served by a public water system, the complete supply system within the subdivision, including the fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the servicing water district and the Hampden Fire Department. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.

#### 2.3.3.2 Private Water Supply:

1. When a proposed subdivision is not to be served by a public water system, adequate water storage facilities shall be provided to support a fire suppression system. These facilities shall be installed at the expense of the applicant.
  - a. Facilities may be ponds with dry hydrants, underground reservoirs, sprinkler systems, or other methods acceptable to the Reviewing Authority.
  - b. A minimum storage capacity of 10,000 gallons shall be provided for a subdivision not served by a public water supply. Additional storage of 2,000 gallons per lot or principal building shall be provided. The Reviewing Authority may require additional storage capacity upon recommendation from the Hampden Fire Department.

- c. Where ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice.
- d. Where ponds, dry hydrants, or reservoirs are constructed, the owner of the lot is responsible for the maintenance of the water storage means and accessway within the subdivision. ~~an easement shall be granted to the municipality granting access to and maintenance where necessary. A suitable accessway to the hydrant or other water source shall be constructed.~~
- e. A detailed plan of the required pond, dry hydrant, piping, accessways, or other provisions, bearing the stamp of a registered Professional Engineer, shall be submitted as part of the application. Hydrants or other provisions for drafting water shall be provided to the specifications of the Hampden Fire Department.
- f. Sprinkler systems to be installed in any construction subject to this ordinance shall comply with the applicable standard as approved by the Office of the State Fire Marshal; edition as adopted by the Maine State Fire Marshal's Office at the time of issuance of a building permit. Maintenance of individual sprinkler systems shall be the responsibility of the individual owner.

## **ARTICLE 10 - PERFORMANCE & DESIGN STANDARDS**

The performance and design standards in this article are intended to clarify and expand upon the statutory review criteria found in Article 1, section 2. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards and make findings that each has been met prior to the approval of a final plan. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met.

### **10.1 Basic Subdivision Layout**

#### **A. Blocks.**

Where street lengths exceed 1,000 feet between intersections with other streets, the Board may require a utility/pedestrian easement, at least 20 feet in width, to provide for underground utility crossings and/or a pedestrian pathway of at least five feet in width constructed in accordance with design standards for sidewalks below. Maintenance obligations of the easement shall be included in the written description of the easement.

#### **B. Lots.**

1. Wherever possible, side lot lines shall be perpendicular to the street.
2. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions and notes on the plan shall

This provision is most appropriate in developing areas where it is desirable to promote pedestrian access, or where the easement may be necessary for sewer, water or electric utilities. In most rural areas, inclusion of this provision may make little sense.

This is simply an idea to provide for more usable regularly shaped lots.

The statute (in Section 4406) prohibits selling a lot other than as shown on the approved plan. Therefore if any lot is subsequently split, regardless of the amount of time that passes, a revised plan must be approved by the review authority. If lots are more than twice the size required by zoning, they can be laid out to be divided later, by providing more than twice the required frontage or lot width.

### *Commentary*

either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.

3. If a lot on one side of a stream (as defined in the DEP Minimum Shoreland Zoning Guidelines), tidal water, or road fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
4. The ratio of lot length to width, outside of the shoreland zone, shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.
5. In areas served by a postal carrier, lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street

Lots in subdivisions should be compact and usable. This provision requires that all land necessary to meet the minimum lot size requirements be all on one side of any potential physical barriers to use as a whole.

This is another provision to encourage a more compact design, providing a lot which is more usable to the purchaser. The statute prohibits lots with shore frontage from having a depth to shore frontage ratio of five to one or more. If a review authority does not wish to incorporate the suggested three to one ratio into its regulations, it should, at the least include a reference to the statutory requirement regarding a five to one ratio for shore-front lots.

With the advent of the state's Enhanced 911 emergency dispatch telephone system, many towns have street naming and numbering ordinances. This section should be coordinated with such an ordinance if one has been enacted.

## Commentary

approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall be considered by the Board.

### C. Utilities.

Utilities serving subdivisions in areas designated by the comprehensive plan as growth areas shall be installed underground. Utilities serving lots with a street frontage of 125 feet or less shall be installed underground. The Board may approve overhead utilities when the applicant proposes reserved affordable housing and provides evidence that the increased costs of underground utilities will raise the costs of the housing beyond the targets for affordable housing in the comprehensive plan.

### D. Monuments.

1. Stone or precast concrete monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
2. Stone or precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135° or less.
3. Stone or concrete monuments shall be a minimum of four inches square at the top and three feet in length, and set in the ground at final grade level. After they are set, drill hole 1/2 inch deep shall locate the point or points

Prior to including this section in the local regulations, the review authority should look at the comprehensive plan for some guidance. Underground electric, telephone and cable television transmission wires can promote aesthetics and increase traffic safety. However underground power is more expensive to install. For this reason, the *Model* suggests that in subdivisions with lots or units reserved for affordable housing, that the review authority be authorized to waive the requirement for underground power if it can be shown the extra costs are too much. The *Model* only requires underground power in the growth area or where lot frontage is fairly small, to avoid the expense in subdivisions with wide frontages.

Note that this section requires the installation of underground utilities prior to paving in order to avoid cutting fresh pavement. Ideally the utilities should be installed prior to the aggregate base course of gravel. This will provide a better road base and save the contractor time and money.

Prior to the sale of any lot in a subdivision, the statute (in Section 4406) requires that at least one corner of the lot be marked with monumentation. The *Model* suggests that all corners of all lots, as well as points of curvature of streets be marked with monuments.

The *Model* suggests that stone or concrete monuments be used at the corners of the boundaries of the subdivision and at certain points along any streets. Stone or concrete monuments are suggested because of their permanence and they are easier to find than a pin.

If a parcel was previously surveyed or has existing monumentation, that monumentation may not be disturbed. In that case, the review authority could waive the requirement for stone or concrete monumentation on the basis of the existing monumentation.

described above.

4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation, as required by the Maine Board of Registration of Land Surveyors.

## 10.2 Sufficient Water.

### A. Water Supply.

1. Any subdivision within the area designated in the comprehensive plan for future public water supply service shall make provisions for connection to the public system. A proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the servicing water company or district beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the district's or company's system as necessary in order to facilitate connection. When public water supply service will not be available at the time of construction of the subdivision, a "capped system" shall be installed within the subdivision to allow future connection when service becomes available without excavation within the right-of-way of any street within the subdivision.
2. When a subdivision is to be served by a public water system, the complete

## Commentary

Suitable monumentation includes iron pins or drill holes in ledge or boulders.

The statutory criterion is that the proposed subdivision have sufficient water available for the reasonably foreseeable needs of the subdivision. This means an adequate supply of good quality water.

In municipalities with existing or planned future public water supply systems, the comprehensive plan should indicate the areas to be served by the system. This provision in the *Model* serves to implement the comprehensive plan policy regarding the service area for public water.

Some literature recommends that any subdivision within 1,000 feet of an existing water supply line be required to connect to the system. If the water district or company has plans for a line extension in the future, but the system is not in place for a particular subdivision proposal, the *Model* recommends the installation of a "capped system" of pipes in the subdivision, which is connected to the public system after the public system is extended.

The name of the appropriate water district or company should be included in these provisions.

If a community has neither an existing or planned public water system such references should be deleted.

The issue of who pays for the additions to the water system may vary from water district to



supply system within the subdivision including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the servicing water company or district and the fire chief. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.

3. When a proposed subdivision is not within the area designated for public water supply service in the comprehensive plan, water supply shall be from individual wells or a private community water system.
  - a. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.
    - (1) Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.

#### *Commentary*

water district and is controlled to a certain extent by the Maine Public Utilities Commission. The *Model* suggests that the costs of the system within the subdivision itself be borne by the applicant. Perhaps some cost sharing of extensions of the system between the existing mains and the subdivision is equitable if that extension will be available for others to use. In subdivisions which will have reserved affordable housing, municipal financing of the water or other utilities is one way to lower development costs. The issue of who pays for improvements to the water system is largely up to the rules of the district or company as approved by the Public Utilities Commission. Prior to adoption of specific language in a community's subdivision regulations, the review authority should contact the water district or company to develop appropriate language. The servicing district or company should review and approve the system extension design to make sure it meets their standards. The fire chief should review the placement of fire hydrants. The *Model* does not provide detailed design standards for water systems or hydrant placement, leaving those types of details to the individual water districts.

A maximum distance of 500 feet between hydrant and building is typically recommended, based on the length and manageability of hose. Check with the fire chief prior to adoption of this requirement.

Similar to the requirement in subsection 1 to connect to the system when the proposed subdivision is within the area planned for service, this provision implements the policies of the comprehensive plan by prohibiting extensions of the public system beyond the area designated in the plan. If a community has neither an existing or planned public water supply system, this paragraph should be deleted.

Typically, the casing for dug wells does not provide as good protection against contamination from surface water runoff as does drilled wells. The chances of surface contamination is increased in higher density developments; therefore the *Model* suggests that dug wells be prohibited when lot sizes are one acre or less.

### *Commentary*

- (2) Wells shall not be constructed within 100 feet of the traveled way of any street, if located downhill from the street, or within 50 feet of the traveled way of any street, if located uphill of the street. This restriction shall be included as a note on the plan and deed restriction to the effected lots.
- b. Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
- c. If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- d. In areas where the comprehensive plan has identified the need for additional water storage capacity for fire fighting purposes, the applicant shall provide adequate water storage facilities.
  - (1) Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the fire chief.
  - (2) A minimum storage capacity of

This provision has been included to prevent contamination of wells from road salt.

The Maine Subsurface Wastewater Disposal Rules require a minimum separation of 100 feet between wells and disposal areas. Until recently the installation of private drinking water wells in Maine was unregulated. In January 1994, the Department of Human Services adopted rules for well drillers and pump installers. These rules also include a 100 foot separation between waste water disposal areas and water wells for single family dwellings. In certain soils, coarse grained sands and gravels and shallow to bedrock soils, some ground water experts recommend larger separations. In reviewing a plan, the review authority should make sure that the required separation is met from all nearby disposal areas, not just ones on the same lot as the well.

Any water supply system serving fifteen connections or 25 people or more is a "public water supply system." It must be licensed by the Department of Human Services and comes under the jurisdiction of the Rules Relating to Drinking Water. Department of Human Services considers a central system in a subdivision serving nine or more dwelling units as serving 25 or more people (three per unit).

The "reasonably foreseeable needs" of the subdivision include fire protection. Adequate fire protection in areas not served by public water includes available storage facilities from which to pump. The comprehensive plan should indicate the areas of the municipality in which adequate facilities exist and those in which additional facilities are needed. The *Model* requires subdivisions to provide some type of storage when located within an area of the town with an identified deficiency. Ponds and dry hydrants are typically the preferred method. Ponds provide the opportunity for a multi-use facility: water storage for fire protection, storm water detention, phosphorus removal to protect lake water quality, outdoor recreation for the residents of the subdivision, and occasionally wildlife or waterfowl habitat. Construction of a fire pond in or near a stream or wetland comes under the jurisdiction of the

10,000 gallons shall be provided for a subdivision not served by a public water supply. Additional storage of 2,000 gallons per lot or principal building shall be provided. The Board may require additional storage capacity upon a recommendation from the fire chief.

- (3) Where ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary.
- (4) Hydrants or other provisions for drafting water shall be provided to the specifications of the fire department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches. A suitable accessway to the hydrant or other water source shall be constructed.
- (5) The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and that the fire chief has indicated in writing that alternate methods

#### *Commentary*

Natural Resource Protection Act, requiring a permit from the Department of Environmental Protection. Some rural fire departments have recently been recommending the installation of a 10,000 gallon or larger concrete or fiberglass reservoir as an alternative to ponds. The fire chief should be consulted on the fire protection plan for all subdivisions.

There may be sites where neither installation of concrete or fiberglass reservoirs nor construction of a pond is possible due to the soils or geologic conditions. In these cases, the *Model* allows the review authority to waive the requirement for storage when the fire chief has indicated there are satisfactory alternatives. Such alternatives may include drafting water from a nearby surface water body

### *Commentary*

of fire protection are available.

#### **B. Water Quality.**

Water supplies shall meet the primary drinking water standards contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan to be recorded in the Registry of Deeds.

The primary drinking water standards deal with contaminants which are health concerns, while the secondary standards are contaminants which present more of an aesthetic concern.

### **10.3 Erosion and Sedimentation and Impact on Water Bodies**

- A. The proposed subdivision shall prevent soil erosion and sedimentation from entering waterbodies, wetlands, and adjacent properties.
- B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- C. Cutting or removal of vegetation along waterbodies shall not increase water temperature or result in shoreline erosion or sedimentation.
- D. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

The statutory criterion is that the proposed subdivision will not cause unreasonable soil erosion or a reduction of the land's capacity to hold water so that a dangerous or unhealthy condition results.

### **10.4 Sewage Disposal**

#### **A. Public System.**

- 1. Any subdivision within the area designated in the comprehensive plan for future public sewage disposal service shall be connected to the public

In municipalities with existing or future public sewage disposal systems, the comprehensive plan should indicate the areas which the system is planned to serve. This provision in the *Model* implements the comprehensive plan policy regarding the

system.

2. When a subdivision is proposed to be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.
3. The sewer district shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
4. The sewer district shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the servicing sewer district or department.

**B. Private Systems.**

1. When a proposed subdivision is not within the area designated for public sewage disposal service in the

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service area for public sewage disposal.

Some literature recommends that a subdivision within 1,000 feet of an existing sewer line be required to connect to the system. Some local sanitary districts or municipalities have enacted their own rules which require a development to connect when it is within a certain distance of an existing line. The subdivision standards should be coordinated with the regulations of the local sanitary district or sewer department.

If the sewer district or department has plans for line extension in the future, but the system is not in place for a particular subdivision proposal, an option is the installation of a "capped system" of pipes in the subdivision, which is connected to the public system after the public system is extended. The name of the appropriate sewer district or department should be included in these provisions. If a community has neither an existing or planned public sewage system these sections should be deleted.

The issue of who pays for the additions to the sewer system may vary from community to community. The *Model* suggests that the costs of the system within the subdivision itself be borne by the applicant. Perhaps some cost sharing for extensions of the system between the existing collectors or interceptors and the subdivision is equitable if that extension will be available for others to use. The standards in the subdivision regulations should be coordinated with the policies of the sewer district or department.

The statutory criteria are that the proposed subdivision will provide for adequate sewage disposal and will not cause an unreasonable burden on municipal services if they are to be utilized. In order to provide adequate sewage disposal, the system must be able to handle the sewage from the subdivision at the time the subdivision is to be occupied. Therefore improvements planned in the future should be considered in determining whether adequate sewage disposal will be available.

The servicing district or department should review and approve the system extension design to make sure it meets their standards. The *Model* does not provide detailed design standards for sewerage systems. These types of details are best left to the individual sewer districts or departments.

This provision implements the policies of the comprehensive plan by prohibiting extensions of the public system beyond the area designated in the plan. If a

comprehensive plan, connection to the public system shall not be permitted. Sewage disposal shall be private subsurface waste water disposal systems or a private treatment facility with surface discharge, licensed by the Department of Environmental Protection.

2. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
  - a. The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to a disposal area on soils which meet the Disposal Rules.
  - b. On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted in the deed so as not to be built upon.
  - c. In no instance shall a disposal area be on a site which requires a New System Variance from the

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community has neither an existing nor planned public sewerage system, this section should be deleted.

In brief, effective May 1995, the Disposal Rules require a site to be a minimum of 100 feet from a perennial water body or well, to be on a slope of 20% or less, and to have a depth to "limiting factor" of 15 inches or more in the shoreland zone and 12 inches or more elsewhere, among other requirements. "Limiting factor" is defined as the seasonal high water table, bedrock, or a restrictive layer in the soil.

Each application for subdivision approval should be accompanied by a site evaluation which indicates the texture and parent material of the soil, and depth to limiting factor found in the test pit. This information should appear on a form printed by the Division of Health Engineering known as an HHE-200. The box on the following page provides additional explanation to assist in understanding the HHE-200 form.

A typical disposal area for a three bedroom single family home will require approximately 1,000 square feet of area. The test pit only looks at one backhoe excavation. Occasionally site conditions can change rather abruptly, particularly with shallow to bedrock soils. The individual conducting the site evaluations, either a Licensed Site Evaluator or Certified Soil Scientist, should certify in writing that a disposal area may be installed satisfactorily at the location of each test pit shown to meet the Disposal Rules.

As mentioned above, the Disposal Rules currently require a depth to the limiting factor of no less than 12 inches (and 15 inches in the shoreland zone). As the depth to limiting factor decreases, the chances of a system malfunctioning may increase. The *Model* suggests that when the depth to limiting factor is less than 24 inches, a second passing site evaluation be submitted, and an area around that test pit be shown on the plan as an area reserved for a replacement disposal area, with building or driveways prohibited. This should be accomplished both by notes on the plan and by restrictions in the deed.

The Disposal Rules contain a procedure by which an individual may receive permission from the Division of Health Engineering to install a system which does not meet the requirements

Subsurface Wastewater Disposal  
Rules.

**10.5 Solid Waste**

If the additional solid waste from the proposed subdivision exceeds the capacity of the municipal solid waste facility, causes the municipal facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the municipality to exceed its contract with a non-municipal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

**10.6 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.**

**A. Preservation of Natural Beauty and Aesthetics.**

1. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
2. Except in areas of the municipality designated by the comprehensive plan

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of the Rules. Effective May 1995, revisions to the Disposal Rules provide for the Local Plumbing Inspector to grant approval for new system variances. For sites which do not meet the minimum soil conditions, a point system has been established. For lots within a proposed subdivision a variance request must obtain a minimum of 75 points out of 100 to be considered. The *Model* suggests prohibiting new system variances within subdivisions.

There may be some conflict between the subdivision statute and other provisions of state law. The criterion in the subdivision statute is that a proposed subdivision not cause an unreasonable burden on the municipality's ability to dispose of solid waste. However Title 38 M.R.S.A., §1305, sub-§1 *requires* a municipality to provide for solid waste disposal for the waste generated within the municipality. Generating more solid waste than municipal facilities are designed to handle or can reasonably handle would clearly be an unreasonable burden. The *Model* suggests that to cause a local facility to fall out of compliance with its operating license, or to cause a municipality to exceed its contract with a private or non-municipal facility would also be an unreasonable burden.

The *Model* suggests that in these cases the applicant find another facility which will accept the waste. Whereas the municipality has a responsibility to provide arrangements for the disposal of solid waste generated within the community, the applicant should not be required to make alternate arrangements for a period of time exceeding that which is needed for the municipality to plan, finance and construct the improvements necessary to allow it to handle the waste. The *Model* suggests a limit of five years.

The criterion in the statute is that the proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline. The *Model* has divided the performance standards for this criterion into five sections.

This section requires the plan to indicate an area on each lot beyond which clearing is not permitted. The *Model* does not suggest any particular maximum area or percentage of a lot as standards or as a design guideline, preferring to leave that to the judgment of the review authority and the applicant on a case by case basis. Even without a percentage or area limit as a standard, including this provision in the municipal regulations may cause both the applicant and the review authority to think about the issue. When a subdivision is located within the direct watershed of a great pond, one of the most effective ways to control phosphorus export is to limit the conversion of existing woodland to lawns. The stormwater management plan may require wooded buffers as a tool to regulate stormwater runoff.

The comprehensive planning statute, the guidelines from the State Planning Office,

as growth areas, the subdivision shall be designed to minimize the visibility of buildings from existing public roads. Outside of designated growth areas, a subdivision in which the land cover type at the time of application is forested, shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveways and streets.

3. The Board may require the application to include a landscape plan that will show the preservation of any existing large specimen trees, the replacement of trees and vegetation, and graded contours.
4. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of buildings when viewed from existing public streets. When a proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a

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and most municipal comprehensive plans discuss the value of protecting the "rural character" of the state and municipalities. The authors' conversations with municipal planning officials and review of several public opinion surveys have led to the conclusion that one of the primary features of rural character is not necessarily the lack of development as much as the perception of the lack of development. Designing subdivisions to minimize the visual impacts as viewed from public roads may contribute greatly to maintenance of rural character in a municipality.

Depending on the site characteristics, this performance standard can be met by a variety of design methods. For proposed subdivisions which are wooded, the retention of a wooded buffer strip along the road in which the removal of trees is prohibited may serve the purpose of protecting the rural character. In proposed subdivisions that have both open field and woods, locating the buildings in the woods will accomplish the goal. The designer of the subdivision may be able to take advantage of topography and "hide" the development behind a hill. Another issue to keep in mind, in the mountainous portions of the state, is the impact of tree removal and building construction along ridge lines. See subsection 5 below for design guidelines for meeting this standard

The retention of healthy large trees within a subdivision can greatly improve the visual quality of the development and the living conditions for the occupants.

Much of the New England townscape's character resulted from the foresight of someone several generations ago to plant street trees. Street trees serve to provide shade, frame views along a street, and in themselves contribute to the beauty of a subdivision. The *Model* has suggested a mix of tall shade trees and medium-height flowering trees to avoid potential



mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

5. When a proposed subdivision contains a ridge line identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.

B. Retention of Open Spaces and Natural or Historic Features.

1. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.
2. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
3. If any portion of the subdivision is designated a site of historic or

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monotony and avoid single species plantings which intensified the catastrophe of Dutch elm disease. Street trees are an investment in the future of a neighborhood, acting to improve the visual character of the streetscape, provide shade to adjoining lawns, lower the street temperature, and provide habitat for "street wildlife" in suburban and urban settings.

The ridges of mountains or hilltops in many communities serve as major visual resources, which comprehensive plans may discuss preserving. Restriction of building activity or forest clearing from these ridge lines can assist in preserving this aesthetic resource. The comprehensive plan should be consulted for the appropriateness of a guideline such as this. If there are no policies to support such a requirement, this section should be deleted.

The comprehensive planning statute encourages municipalities to incorporate open space planning and greenbelts into their comprehensive plans. This provision of the *Model* implements this policy by requiring areas designated as future open space to be reserved as such in a subdivision plan. Any time the local subdivision standards or land use ordinance require land which is otherwise buildable to be designated as open space, the municipality is strongly encouraged to consider appropriate zoning provisions which either allow the area within the open space to be counted for purposes of determining the number of lots or dwelling units in the subdivision or establishing a compensatory system such as the transfer of development rights, to soften possible land owner opposition to such a measure, provide a stronger degree of fairness to its growth management programs, and avoid possible claims of taking private property without just compensation. Recent U.S. Supreme Court cases have stressed the importance of allowing a property owner use of their land and the need for a rational relationship between the impacts of the development and the restrictions placed upon that development. If a municipality's comprehensive plan does not have an open space component, this section should be deleted.

There are many reasons a site could be designated a unique natural area ranging from the habitat for a rare plant or animal, to rare geologic formations. Comprehensive plans should contain an inventory of the unique natural areas within the municipality and propose strategies for their preservation. Inclusion of any unique natural areas within the open space of a proposed subdivision, and a proper management plan to protect the site's value should implement those comprehensive plan policies.

The Maine Historic Preservation Commission maintains a register of known historic and

prehistoric importance by the comprehensive plan, National Register of Historic Places, or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Board shall seek the advice of the Maine Historic Preservation Commission in reviewing such plans.

4. The subdivision shall reserve sufficient undeveloped land to provide for the recreational needs of the occupants. The percentage of open space to be reserved shall depend on the identified needs for outdoor recreation in the portion of the municipality in which the subdivision is located according to the comprehensive plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the occupants of the subdivision, and the site characteristics, but shall constitute no less than 5% of the area of the subdivision. In determining the need for recreational open space the Board shall also consider the proximity of the subdivision to neighboring dedicated open space or recreation facilities; and the type of development. Sites selected primarily for scenic or passive recreation purposes shall have such

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prehistoric sites. These also should be in the inventory of the municipal comprehensive plan. The comprehensive plan should designate which are important enough to be worthy of protection. The subdivision plan should provide for a level of protection called for in the comprehensive plan.

The need for outdoor recreation space and facilities should be addressed in the comprehensive plan. The plan should contain an analysis of the needs for different types of facilities in the municipality and perhaps in various neighborhoods or localities within the municipality.

The amount of land needed for outdoor recreation within a subdivision will vary from situation to situation. Most likely the biggest determinant will be the lot sizes within the subdivision. Lots of 10,000 square feet or smaller provide little opportunity for play area on the lot. Lots of two to three acres on the other hand provide enough undeveloped open area on each lot as to generate little demand for other facilities. A subdivision which is immediately adjacent to a neighborhood park will require less land to be reserved for open space than a lot which is two miles from the nearest public facility. A subdivision with one and two bedroom apartments will generate a different demand for outdoor recreation than one with three bedroom single family houses.

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access as the Board may deem suitable and no less than 25 feet of road frontage.

5. Subdivisions with an average density of more than three dwelling units per acre shall provide no less than fifty percent of the open space as usable open space to be improved for ball fields, playgrounds or other similar active recreation facility. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet.
6. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
7. Reserved open space land may be dedicated to the municipality.
8. Where land within the subdivision is not suitable or is insufficient in amount, and when suggested by the comprehensive plan, a payment in lieu of dedication may be substituted for the reservation of some or part of the open

The issue of who should own open space varies from municipality to municipality. The benefits of public ownership are that the public may use the land or facility, rather than solely the residents of a subdivision, and that may meet a need identified in the comprehensive plan. The drawback, of course, is the cost of upkeep and maintenance. The comprehensive plan should contain policies as to which types of open space land and facilities the town would like to have dedicated to the municipality and which should remain in private hands to be managed by a lot owners' association or other private entity. Any requirement for an applicant to dedicate land to the municipality needs to be carefully accounted for in the municipality's comprehensive plan and there must be a direct link between the impacts of the subdivision and the purposes of the land dedication. The U.S. Supreme Court, in several recent cases, has emphasized the need for planning to precede regulation and for the correlation between the impacts and the dedication.

There may be cases where the municipality will prefer to see a donation of cash in lieu of the reservation of land. These cases include where a municipality has a clear capital improvements program which calls for the purchase or improvement of specific open space or outdoor recreation facilities. Cash contributions will provide an opportunity to obtain these without as heavy a burden on the property tax. It may be more beneficial for the community

space requirement. Payments in lieu of dedication shall be calculated based on the percentage of reserved open space that otherwise would be required and that percentage of the projected market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor. The payment in lieu of dedication shall be deposited into a municipal land open space or outdoor recreation facility acquisition or improvement fund.

- C. Protection of Significant Wildlife Habitat.
- If any portion of a proposed subdivision lies within:
1. 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife Beginning with Habitat Project or the comprehensive plan as:
    - a. Habitat for species appearing on the official state or federal lists of endangered or threatened species;
    - b. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
    - c. Shorebird nesting, feeding and staging areas and seabird nesting islands;
    - d. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or
  2. 1,320 feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or

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to achieve the goals of the capital improvement program than to obtain scattered pieces of open space where subdivision activity happens to be taking place. If a community has developed a greenbelt plan, subdivision activity away from the designated open space can better contribute to the municipality with a cash donation, than the donation of land that has not been designated for open space.

Appropriate zoning ordinance and subdivision regulation provisions allowing clustering (see section 10.13 ) should be enacted to avoid the "takings" issue. The comprehensive plan should indicate which important wildlife habitats are to be protected. The Department of Inland Fisheries and Wildlife has mapped "essential habitat" for rare and endangered species and "significant habitat" under the Natural Resources Protection Act in the Beginning with Habitat Project. See:

<http://www.beginningwithhabitat.org>, or contact your Regional Council.

Not only does the habitat itself need to be protected but activities and human disturbance within the surrounding areas need to be controlled to preserve the habitat's value. The guidelines recommend the review of a subdivision plan by a wildlife biologist to ensure sensitive area protection. The Department of Inland Fisheries and Wildlife is in the process of adopting standards for the protection of habitat. Until these practices are adopted, the Department of Inland Fisheries and Wildlife recommends that protection measures for proposed subdivisions in areas designated as significant wildlife habitat in comprehensive plans be proscribed on a case-by-case basis. Review authorities should contact Department of Inland Fisheries and Wildlife biologists or regional council staff to find out if new management recommendations are available.

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travel corridor;

3. Or other important habitat areas identified in the comprehensive plan or in the Department of Inland Fisheries and Wildlife Beginning with Habitat Project;

the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports. There shall be no cutting of vegetation within such areas, or within the strip of land extending at least 75 feet from the edge or normal high-water mark of such habitat areas. The applicant must consult with the Maine Department of Inland Fisheries and Wildlife, and provide their written comments to the Board. The Board may require a report to be submitted, prepared by a wildlife biologist, selected or approved by the Board, with demonstrated experience with the wildlife resource being impacted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe any additional appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

#### D. Protection of Important Shoreland Areas.

1. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.
2. Within areas subject to the state

A review authority can determine whether a biologist hired by an applicant is qualified to conduct a site assessment by asking if the wildlife biologist certified by the Wildlife Society (the professional association of wildlife biologists) and if the biologist has previous experience assessing the particular resource(s) of concern in this case. The biologist should submit copies of his or her credentials along with the report.

Access to the shoreline of waterbodies has been made a priority by the Legislature. The comprehensive planning law mentions this priority, and the subdivision statute has even included visual access to the shore in the criteria. These design guidelines are based on the minimum shoreland zoning guidelines adopted by the Board of Environmental Protection. Therefore for subdivisions along a river, great pond, tidal water body or freshwater wetland larger than ten acres in size, or along a "stream" as defined for purposes of shoreland zoning, these restrictions should be in place anyway. A municipality may wish to extend

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mandated shoreland zone, within a strip of land extending 100 feet inland from the normal high-water line of a great pond or any tributary to a great pond, and 75 feet from any other water body or the upland edge of a wetland, a buffer strip of vegetation shall be preserved. The plan notes, and deeds to any lots which include any such land, shall contain the following restrictions:

- a. Tree removal shall be limited to no more than 40% of the volume of trees 4 inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period.
- b. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown.
- c. However, a footpath not to exceed ten feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a great pond, or a tributary to a great pond, the width of the foot path shall be limited to six feet.
- d. In order to protect water quality and wildlife habitat adjacent to great ponds, and tributaries to great ponds, existing vegetation under three feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described above.

these restrictions to brooks which do not otherwise need to be covered by shoreland zoning.

Requiring their inclusion as deed restrictions will help assure compliance, as perspective lot purchasers should become more aware of them, than if they are simply in the municipality's zoning ordinance.

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e. Pruning of tree branches, on the bottom third of the tree is permitted.

3. Within areas subject to the state mandated shoreland zone, beyond the buffer strip designated above, and out to 250 feet from the normal high water line of a water body or upland edge of a wetland, cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whichever is greater, including land previously developed.

#### **E. Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services.**

1. All open space common land, facilities and property shall be owned by:
  - a. The owners of the lots or dwelling units by means of a lot owners' association;
  - b. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
  - c. The municipality.
2. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may

The owner, developer or applicant should not continue to own the open space or other land or facilities in the subdivision. Land which is reserved as open space is usually best dedicated for public ownership. Land which is reserved as active recreation or other neighborhood facilities should be owned by the lot owners' association. Subdivision streets which are not to be dedicated as public ways, common septic systems or wells, and other facilities should also be owned by the lot owners' association. A review authority may wish to consider a requirement that the developer provide an initial capital fund for the association to cover replacement costs of major facilities.

Future development of the common land or open space should be prohibited, especially if the area has been used in calculating the density of the subdivision. The best way to accomplish this is through a combination of notes on the plan and conservation easements to the municipality.

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be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future development.

3. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
  - a. It shall not be used for future building lots; and
  - b. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
4. The final plan application shall include the following:
  - a. Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
  - b. Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and
  - c. Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.
5. In combination, the documents

Prospective purchasers of lots in the subdivision should be aware of the possibility of public ownership of the open space.

The proper establishment of the lot owners' association is very important to the success of any development that is going to have commonly owned property or facilities. The covenants and by-laws which establish the association must make its responsibilities, duties, and authority very clear. The review authority should read through them carefully and make sure that points covered in these sections are properly covered. Membership in the association should be mandatory for every lot or unit owner in the development. The association must be given the authority to collect assessments to finance its operations and replacement costs for major capital facilities, and place liens on the property of those who do not pay. Sample by-laws or covenants are available from regional councils. In a subdivision in which the open space and roads are to be dedicated to the municipality, the establishment of an association may not be necessary.



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referenced in paragraph D above shall provide for the following.

- a. The homeowners' association shall have the responsibility of maintaining the common property or facilities.
- b. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
- c. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
- d. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Board upon request of the lot owners' association or the developer.

**10.7 Conformance with Zoning Ordinance and Other Land Use Ordinances.**

All lots, other than those found within cluster developments approved pursuant to section 10.13, shall meet the minimum dimensional requirements of the zoning ordinance for the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria from the zoning ordinance and other land use

ordinances.

**10.8 Financial and Technical Capacity.**

**A. Financial Capacity.**

The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.

**B. Technical Ability.**

1. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
2. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

**10.9 Impact on Ground Water Quality or Quantity.**

**A. Ground Water Quality.**

1. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
  - a. A map showing the basic soils